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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/228,954	01/12/1999	ALONZO M. BURNS JR.	971286A	7883

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 11/07/2002

25

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/228,954

Applicant(s)

BURNS ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-34, 58-61 and 63-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-34, 58-61 and 63-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 23, 24, 26-28, and 63 stand rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1 151 521 assigned to Tarkett AB, in view of in view of J. Levinstein's *The Complete Carpet Manual*, page 27, L. Shoshkes' *Contract Carpeting*, Chapter 4, pages 60-67, and US 5,545,276 issued to Higgins, and in further view of US 5,658,969 issued to Gerace, as set forth in section 4 of the last Office Action.
3. Claims 25, 64, and 65 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Tarkett, Levinstein, Shoshkes, and Gerace references, as set forth in section 5 of the last Office Action.
4. Claims 29 and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Tarkett, Levinstein, Shoshkes, and Gerace references, as set forth in section 6 of the last Office Action.
5. Claim 31 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Tarkett, Levinstein, Shoshkes, and Gerace references, as set forth in section 7 of the last Office Action.
6. Claims 32-34, 58, 59, and 61 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Tarkett, Levinstein, Shoshkes, and Gerace references, and in further view of US 3,708,441 issued to Joslyn et al., as set forth in section 8 of the last Office Action.

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7. Claims 66 and 68 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Tarkett, Levinstein, Shoshkes, and Gerace references, and in further view of US 3,819,463 issued to Ervin and page 362 of Rodriguez's *Principles of Polymer Systems*, 2nd ed., as set forth in section 9 of the last Office Action. Claim 67 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Tarkett, Levinstein, Shoshkes, Gerace, and Joslyn references and in further view of US 3,819,463 issued to Ervin and page 362 of Rodriguez's *Principles of Polymer Systems*, 2nd ed., as set forth in section 9 of the last Office Action.

Response to Arguments

8. Applicant's arguments filed on August 26, 2002, have been fully considered but they are not persuasive.

9. Applicant continues to argue that the Examiner is asserting Official Notice that the various types of carpet (i.e., broadloom, carpet tiles, and wide roll) are "interchangeable" (Response, page 2, 3rd paragraph and page 8, 1st paragraph). Again, the Examiner reiterates the Official Notice was given for the mere fact that broadloom, carpet tiles, and wide roll carpet are conventional forms of carpet and that PVC plastisol backings are known to be applicable to each of these carpet types despite the differences in the final structure of said carpet types, rather than for the interchangeability of the various forms of carpet as asserted by Applicant. Applicant concedes the former fact (Response, page 2, 3rd paragraph, lines 2-3). In support of the latter fact, the Examiner cites *Carpet Substrates*, by P. Ellis, 1973, Chapters 7 and 8, pages 71-98, which teaches PVC backings for conventional tufted broadloom and/or wide roll carpet are known (Ellis, page 75, paragraphs 2-5), as well as PVC backings for carpet tiles (Ellis, page 85,

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lines 6-13 and page 87, paragraph 4-page 88, paragraph 1). Thus, Applicant's assertion that the Examiner's conclusion that "PVC plastisol backings are known to be applicable to each of these carpet types" is incorrect (Response, page 2, 4th paragraph) is refuted.

10. With respect to the Desai and Turner Declarations filed on August 26, 2002, said Declarations under 37 CFR 1.132 are insufficient to overcome the above rejections because the Declarations address an issue (i.e., interchangeability) which is not asserted by the Examiner. Thus, said Declarations are irrelevant to the present rejections.

11. In response to Applicant's argument regarding the Tarkett reference (Response, page 3, 2nd paragraph and page 5, 4th paragraph), it is reiterated that Tarkett's teaching is not limited to latex carpet backings but also plastisol carpet backings. Yes, Tarkett's Example 1 states the latex composition is applied as a carpet backing, while Example 2's plastisol is not explicitly taught to be applied to a carpet. However, both example report "delamination strengths." Thus, Example 2 must be laminated or applied to a substrate in order to produce a property of delamination strength. The only substrate Tarkett teaches is the carpet in Example 1. Hence, one is left to conclude that the substrate which produces a delamination strength in Example 2, is also a carpet substrate. Therefore, the Examiner disagrees with Applicant's limited reading of Tarkett's teaching of carpet backings.

12. Applicant asserts that the Examiner has "not explained why it would be obvious to actually incorporate a blowing agent into Tarkett" (Response, paragraph spanning pages 3-4 and paragraph spanning pages 15-16). In response, it is reiterated that Tarkett clearly teaches foam backings that employ mechanical frothing, rather than chemical foaming (i.e., blow agent). Additionally, Joslyn clearly teaches the two are art recognized equivalents. The motivation

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presented in the rejection was based upon an art recognized equivalence of blow agents and mechanical frothing as methods of producing foams. In order to rely on equivalence as a rationale supporting an obviousness rejection, *the equivalency must be recognized in the prior art*, and cannot be based on Applicant's disclosure or the mere fact that the components at issue are functional or mechanical equivalents (MPEP 2144, emphasis added). *Smith v. Hayashi*, 209 USPQ 754 (Bd. of Pat. Inter. 1980) states, "The mere fact that phthalocyanine and selenium function as equivalent photoconductors in the claimed environment was not sufficient to establish that one would have been obvious over the other. However, there was evidence that both phthalocyanine and selenium were known photoconductors in the art of electrophotography. 'This, in our view, presents strong evidence of obviousness in substituting one for the other in an electrophotographic environment as a photoconductor.'" An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982). Thus, the prior art of Joslyn provides sufficient motivation to employ a blow agent for foaming rather than mechanical frothing.

13. With respect to Applicant's assertion that Gerace is not analogous art (Response, page 5, 4th paragraph), it is noted that while Gerace is not specific to carpet substrates, Gerace is directed to plastisol coatings *in general*. Since plastisol coatings are known to be employed in carpets, the Examiner contends the art of Gerace is analogous.

14. In response to Applicant's argument that the references fail to show certain features of Applicant's invention, it is noted that the features upon which applicant relies (i.e., flexibility and impact absorption) are not recited in the rejected claims. Although the claims are interpreted in

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light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

15. Therefore, Applicant's arguments are found unpersuasive and the above rejections are maintained.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the


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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
PRIMARY EXAMINER

cj
November 4, 2002